

TO: Honorable Governor Chester J. Culver  
Mark Brandsgard, Chief Clerk of the House  
Michael Marshall, Secretary of the Senate  
Ron Parker, Senate Democrat Caucus  
Peter Mattes, Senate Republican Caucus  
Joseph Romano, House Democrat Caucus Staff  
Jeff Mitchell, House Republican Caucus Staff  
Jamie Cashman, Governor's Office

FROM: The Environmental Protection Commission

DATE: January 19, 2010

SUBJECT: Annual Report and Recommendations

The Iowa Environmental Protection Commission (EPC) respectfully submits its Annual Report and Recommendations to the Governor and General Assembly of Iowa pursuant to Iowa Code Chapter 455B.105(5). The report presents what it considers the major activities and accomplishments of the EPC for 2009. More importantly, the Commission submits its recommendations for policy and legislative changes for 2010. These recommendations reflect the issues that the Commission has worked on over the past year and equally important reflect many of the comments we have heard from citizens of Iowa during our commission meetings and during formal public comment periods of our rules.

We thank you for your consideration of the report and its recommendations. The Commission stands ready to answer any questions you may have on the report and its recommendations.

Sincerely,

*Charlotte Hubbell, Des Moines, Chair*

*Dale Cochran, Urbandale*

*Susan Heathcote, Des Moines*

*Paul Johnson, Decorah*

*Carrie La Seur, Mount Vernon*

*David Petty, Eldora*

*Lorna Puntillo, Sioux City*

*Marty Stimson, Cedar Rapids, Vice-chair*

*Gene Ver Steeg, Inwood*

**Report to the Governor and General Assembly**  
Iowa Environmental Protection Commission  
January 19, 2010

Pursuant to Code of Iowa Section 455B.105(5) the Iowa Environmental Protection Commission (the "Commission") submits the following report to Governor Culver and the Iowa General Assembly. As specified in the statute, this report discusses the accomplishments and status of the programs administered by the Environmental Services Division of the Department of Natural Resources. The report also makes legislative recommendations for consideration by the Governor and General Assembly based on Commission observations regarding the state of the environment in the past year. The report takes into account comments and concerns the Commission frequently hears from Iowa citizens.

In issuing this report and making these recommendations, the Commission encourages the Governor and the General Assembly to protect Iowa's natural resources when developing statewide policies for economic development. The Commission believes the protection of the environment is consistent with and, in fact, promotes the development of a strong economy and enhances the quality of life necessary to attract workers and jobs to our state. The Commission's recommendations are based on the understanding that proper environmental protection and economic growth are compatible goals for the State of Iowa.

### **Budget Cuts**

DNR is woefully underfunded and is in danger of sacrificing federal dollars due to lack of matching funds. For example, the level of compliance inspections of confinement animal feeding operations will be reduced, including the discontinuance this fiscal year of on-site Manure Management Plan (MMP) compliance inspections. Over 800 on-site MMP inspections were done in FY 2009 which was already a drop from previous years. Now, none will be made. It is important for the DNR to have a presence in rural areas, and this will be one less instance of them being able to help farmers review their proposed MMPs and check on compliance with existing MMPs. We have made great progress over the last 10 years (there were 1,500 MMPs then; today there are 6,000 all of which have a Ph index). We would hate to lose momentum now. Additionally, the Department is still seeking reimbursement from FEMA of \$150,000 in costs incurred from the 2008 flood recovery effort. Finally, review of air emissions from smaller sources, some sectors of which have been found to be in non-compliance with existing emissions regulations, will be reduced.

## Major Accomplishments of the Department and Commission in 2009

The DNR and EPC continued with the legislative directive to assess Iowa streams and rivers for their actual uses and adopt classifications to make sure those uses are of record and continue to be attained. This year, 187 river and stream segments, covering over 1,050 miles, were reviewed for recreational use. Also, 134 river and stream segments, totaling almost 300 miles, were reviewed for aquatic life use. These assessments are reviewed under the 1972 Federal Clean Water Act. Combined with last year's assessments, they represent 485 stream segments out of at least 1,100 required to be assessed by state law. Significant staff resources are needed to complete this important work, and the Commission is concerned that staff reductions due to budget cuts will further delay completion of these stream assessments. We have made terrific progress in this area and commend the department staff for their hard work.

Major revisions to Iowa's water quality standards that incorporate anti-degradation rules and implementation procedures as required under the 1972 Federal Clean Water Act have been adopted by the Commission. These rules establish procedures to prevent unnecessary new pollution from degrading **high quality** waters and establish a new designation of Outstanding Iowa Waters to protect **exceptional** water resources from degradation. These rules will be reviewed at the February 8, 2010 meeting of the Administrative Rules Review Committee.

In 2008, the Commission started drafting rules limiting the surface application of both liquid and solid manure on frozen and snow-covered ground. Research that led to these proposed rules inspired the legislature to take on the challenge in 2009 and enact a law that restricts the application of liquid manure on frozen and snow-covered ground. **Animal feeding operations with fewer than 500 animal units are exempt from the law as is application of solid manure (deep bedded and poultry litter).** The Commission has drafted new rules designed to implement the law. Six public hearings have been scheduled. The Administrative Rules Review Committee is expected to review any changes to the rules resulting from public comment early this summer.

## Public Hearings

Approximately 56 public hearings were held around the state seeking public input on a variety of issues, including application of manure or frozen and snow-covered ground, stream reclassifications through use assessment and use attainability analyses, corrective action requirements for owners and operators of underground storage tanks, well construction discharge, confined animal feeding operation permit appeals, certification of groundwater professionals, lake nutrient criteria, water quality standards for chloride, sulfate and total dissolved solids, etc. It is estimated that over 1,200 people attended these hearings and over 5,000 people provided written comment, probably more than any other state agency.

## **Recommendations for Future Legislative Action**

### **Water Quality**

- Continued efforts are needed to address non-point source pollution from agriculture and urban runoff. Non-point sources of pollution are the major contributor to nutrient and bacterial impairment of Iowa's water and these sources must be controlled to achieve Iowa's clean water goals.
- Hold hearings regarding "emerging contaminants". Emerging contaminants are defined to include human and veterinary prescription drugs, diagnostic agents, hormones, cosmetics, dyes, preservatives, detergents and other organic compounds. The presence of low concentrations of some chemicals can affect or damage the endocrine system, the key control system of most organisms.
- Better nutrient management from all sources is needed to reduce impairment of Iowa's water bodies. Severe cyanobacteria episodes, periodic high ammonia levels, and high nitrates and e-coli in the Raccoon and Des Moines rivers, mean that drinking water supplies to Des Moines and several other central Iowa communities are in jeopardy.

### **Air Quality**

- Adopt the burn ban proposed by the department by amending Ch 455B.133 that would allow the Department to adopt rules to implement a phased-in ban on the burning of residential waste (household trash and landscape waste) in municipalities.

- Adopt the anti-idling law proposed by the department. Approximately 15 states and dozens of local jurisdictions have anti-idling laws that apply to over-the-road tractor trailers. Iowa's southeast quadrant has been determined to violate federal air quality standards for particulate matter. Reducing idling of internal combustion engines will help reduce particulate matter levels in this quadrant and statewide.
- Modify the air quality anti-stringency law contained in Iowa Code 455B.133(4) which says that state laws may not be more stringent than federal laws governing air quality standards. The effect of such a legal change would be to provide the department with some regulatory flexibility in addressing unusual circumstances.
- Require retrofitting of coal generating power plants in the state unless it is required that the owner/operator utilize best available control technologies in the control of pollutants such as sulfur dioxide, nitrogen oxide, particulate matter (PM) 2.5 and mercury which are produced when coal is burned.

### **Animal Feeding Operations**

Concentration of animal feeding operations continues to be a concern voiced by citizens at commission meetings. The public feels it has an inadequate voice in decisions on siting and issuance of permits. The Commission is limited in what it can do to address citizen complaints.

- The legislature should consider authorizing the Department to assess cumulative impacts of existing livestock facilities to air and water quality when considering approval of permits for new livestock facilities. The existence of water impairments listed on the state's impaired waters list and impacts to downstream drinking water sources must be considered and addressed prior to issuing a permit.

### **Solid Waste**

While the Commission believes it and the Department have the authority to create stricter regulations related to the disposal of coal ash as well as monitoring by industry of groundwater during disposal and following closure of a disposal site (similar to the monitoring required of municipal solid waste), we believe the legislature should weigh in on this issue. Specifically, the legislature could do the following:

- Prior to disposal or use as a “beneficial use”, the legislature should require the characterization and analysis of coal ash so that waste that poses particularly high risks to human health (as indicated by existing standards for compounds such as arsenic and mercury) is not sited near drinking water supplies or residential areas or used in residential construction, such as, wallboard material. Since toxin levels can vary depending on the type of coal combusted, continuing to treat coal ash as a homogenous waste stream does not adequately consider the variations in risk. As testing of coal ash sources from Iowa and other states has shown, levels of compounds such as arsenic can exceed recommended safe standards in some sources of coal ash.

### **Enforcement and Administration**

The Commission recognizes that the state is in a difficult budget situation. Nevertheless, taxpayers will pay for corrective action eventually if proper enforcement of anti-pollution laws is not followed. In budgeting, the legislature should provide the Department with a sufficient budget for an effective environmental enforcement program and sufficient funds for the Department to operate its permitting programs in a timely and efficient manner.

### **Conclusion**

It is clear from public comment before the Commission that Iowans want and expect clean air and clean water. It is also evident that Iowans are concerned about other global environmental issues, such as energy efficiency, global warming and climate change, and declining biodiversity. The Commission believes that Iowans, working in a partnership of individuals, government and business representatives, will meet the challenges of environmental stewardship in the 21<sup>st</sup> century while recognizing the responsibilities that arise as we position Iowa to become the renewable energy capital of the United States.

The Commission thanks the Governor and the General Assembly for the opportunity to submit this report and invites further inquiry and conversation about these issues.

*Charlotte Hubbell, Des Moines, Chair  
Environmental Protection Commission*

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